

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

STATE OF DELAWARE	)	
	)	
v.	)	RK-08-09-0115-01
	)	PFDCF (F)
<b>TYRONE J. MARTIN</b>	)	RK-08-09-0117-01
	)	Att. Trafficking Cocaine (F)
ID No. 0808015453A	)	
Defendant	)	

**ORDER**

On this 5th day of August, 2010, upon consideration of Defendant's Motion for Postconviction Relief, the Commissioner's Report and Recommendation, and the record in this case, it appears that:

1. On April 30, 2009, Defendant, Tyrone J. Martin ("Martin"), pled guilty, to one count of Possession of a Firearm During the Commission of a Felony, 11 *Del. C.* § 1447A; and one count of Trafficking in Cocaine 10 - 50 grams, 16 *Del. C.* § 4753A. Martin was also facing multiple additional drug and weapons charges. In exchange for Martin's plea, the State entered *nolle prosequis* on the remaining charges and agreed to a presentence investigation and to cap its recommended sentence at eight years incarceration. Due to his prior criminal status, Martin was facing a minimum mandatory sentence of thirty-three years had he gone to trial and been found guilty.

2. The Court sentenced Martin to a total of fifteen years incarceration, suspended after serving six years with credit for time served, followed by probation.

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*August 5, 2010*

3. Martin did not appeal his conviction or sentence to the State Supreme Court.

4. Next, Martin filed the instant Motion for Postconviction Relief pursuant to Superior Court Rule 61.

5. The Court referred this motion to the Superior Court Commissioner Andrea M. Freud pursuant to 10 *Del. C.* §512 (b) and Superior Court Criminal Rule 62 for proposed findings of facts and conclusions of law.

6. The Commissioner has filed a Report and Recommendation, concluding that the motion for postconviction relief should be denied, because it is procedurally barred.

7. No objections to the Report have been filed.

**NOW, THEREFORE**, after careful and *de novo* review of the record in this action, and for reasons stated in the Commissioner's Report and Recommendation dated July 1, 2010,

**IT IS ORDERED** that the Commissioner's Report and Recommendation is adopted by the Court, and the Defendant's Motion for Postconviction Relief is **DENIED**.

\_\_\_\_\_  
/s/ Robert B. Young

J.

RBV/sal

oc: Prothonotary

cc: The Honorable Andrea M. Freud  
Counsel  
Defendant

File

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
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STATE OF DELAWARE	)	
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v.	)	RK-08-09-0115-01
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<b>TYRONE J. MARTIN</b>	)	RK-08-09-0117-01
	)	Att. Trafficking Cocaine (F)
ID No. 0808015453A	)	
Defendant	)	

**COMMISSIONER'S REPORT AND RECOMMENDATION**

**Upon Defendant's Motion for Postconviction Relief  
Pursuant to Superior Court Criminal Rule 61**

Kathleen A. Dickerson, Esq., Deputy Attorney General, Department of Justice, for the State of Delaware.

Mr. Tyrone J. Martin, *Pro se*.

FREUD, Commissioner  
July 1, 2010

The Defendant, Tyrone J. Martin ("Martin"), pled guilty on April 30, 2009,<sup>1</sup> to one count of Possession of a Firearm During the Commission of a Felony, 11 *Del.*

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<sup>1</sup> Martin originally pled guilty to these charges on April 17, 2009. On the date of his sentencing, for technical reasons, the parties agreed to have Martin withdraw the April 17 plea, and re-plead guilty to the same charges and to be immediately sentenced.

C. § 1447A; and one count of Trafficking in Cocaine 10 - 50 grams, 16 *Del. C.* § 4753A. Martin was also facing multiple additional drug and weapons charges. In exchange for Martin's plea, the State entered *nolle prosequis* on the remaining charges and agreed to a presentence investigation and to cap its recommended sentence at eight years incarceration. Due to his prior criminal status, Martin was facing a minimum mandatory sentence of thirty-three years had he gone to trial and been found guilty. The Court sentenced Martin to a total of fifteen years incarceration, suspended after serving six years with credit for time served, followed by probation. Martin did not appeal his conviction or sentence to the State Supreme Court. Instead, Martin filed the instant Motion for Postconviction Relief pursuant to Superior Court Rule 61.

### **MARTIN'S CONTENTIONS**

In his motion, Martin raises the following grounds for relief:

Ground one: Invalid search warrant.

The passage of time render the original information insufficient to establish probable cause at a later date (United State v. Sidwell). However the vitality of probable cause cannot be quantified by simply counting the number of days of the facts supplied and the issuance of warrant and affidavit.

In this case Detectives said CI [confidential informant] brought drugs from my residence which gave them probable cause but buy was more than a week before warrant was issued. United States v. Sidwell states probable cause existed to support warrant for defendant's residence when CI conducted drug buy at defendant's

residence within 72 hours of issuance of warrant. Which means police right after whoever made that buy was'ent (sic) suppose to wait a whole week.

Ground two: Search and seizure.

In determining whether an affidavit for search warrant which is based on CI's tip reviewing court should consider whether CI personally appeared or presented an affidavit or testified before the magistrate allowing the judge to evaluate the informant's knowledge.

Ground three: effective assistance of counsel.

Lawyer failed to file important paperwork favorable to defendant in this case.

## **DISCUSSION**

Under Delaware law, this Court must first determine whether Martin has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claim.<sup>2</sup> This is Martin's first motion for postconviction relief and it was filed within one year of his conviction becoming final, so the requirements of Rule 61(i): (1) - requiring filing within one year and (2) - requiring that all grounds for relief be presented in initial Rule 61 motion are met. Martin's claims were not raised at the plea or sentencing. Therefore, they are barred by Rule 61(i)(3), absent a demonstration of cause for the default and prejudice. To the extent they can be discerned and giving Martin the benefit of the doubt, one can

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<sup>2</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

see some minor hint that he is alleging ineffective assistance of counsel on each of his claims. Therefore, the Court will treat these claims as having alleged cause for his failure to have raised his claims earlier.

Rule 61(i)(3) does not bar relief at this point as to Martin's grounds for relief should he demonstrate that his counsel was ineffective and that he was prejudiced by counsel's actions. To prevail on his claims of ineffective assistance of counsel, Martin must meet the two prong test of *Strickland v. Washington*.<sup>3</sup> In the context of a guilty plea challenge, *Strickland* requires a defendant show: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that counsel's actions were prejudicial to him in that there is a reasonable probability that, but for counsel's error, he would not have pled guilty and would have insisted on going to trial and that the result of a trial would have been his acquittal.<sup>4</sup> The failure to establish that a defendant would not have pled guilty and would have proceeded to trial is sufficient cause for denial of relief.<sup>5</sup> In addition, Delaware courts have consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.<sup>6</sup> When examining the representation of counsel pursuant

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<sup>3</sup> 466 U.S. 668 (1984).

<sup>4</sup> *Strickland*, 466 U.S. at 688.

<sup>5</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

<sup>6</sup> *Younger v. State*, 580 A.2d 552, 555-56 (Del. 1990).

to the first prong of the *Strickland* test, there is a strong presumption that counsel's conduct was professionally reasonable.<sup>7</sup> This standard is highly demanding.<sup>8</sup> *Strickland* mandates that when viewing counsel's representation, this Court must endeavor to “eliminate the distorting effects of hindsight.”<sup>9</sup>

Following a complete review of the record in this matter, it is abundantly clear that Martin has failed to substantiate his claims that his attorney was ineffective. The essence of Martin’s claims are that his counsel failed to investigate the facts, and did not file motions Martin felt were appropriate. Martin also argues that there were problems with the search warrant. What Martin fails to acknowledge, however, is that by virtue of his guilty plea, he waived any claims concerning the search warrant.

Martin’s counsel, in her affidavit, completely and effectively details each of Martin’s claims. I find counsel's affidavit, in conjunction with the record, as noted by the State, more credible than Martin’s self-serving contentions that his counsel’s representation was ineffective. Martin was facing trial on serious charges, and risked being sentenced to a minimum mandatory of thirty-three years in prison. The State’s case against Martin was exceptionally strong. Martin’s counsel was able to negotiate a plea bargain with the State which resulted in only six years incarceration, five of

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<sup>7</sup> *Albury v. State*, 551 A.2d 53, 59 (Del. 1988) (citing *Strickland*, 466 U.S. at 689).

<sup>8</sup> *Flamer v. State*, 585 A.2d 736, 754 (quoting *Kimmelman v. Morrison*, 477 U.S. 365, 382 (Del. 1996)).

<sup>9</sup> *Strickland*, 466 U.S. at 689.

which were minimum mandatory. Martin and his attorney discussed the case prior to the entry of the plea. The plea bargain was clearly advantageous to Martin. Counsel's representation was certainly well within the range required by *Strickland*. Additionally, when Martin entered his guilty plea, he stated that he was satisfied with defense counsel's performance. He is bound by his statement unless he presents clear and convincing evidence to the contrary.<sup>10</sup> Consequently, Martin has failed to establish that his counsel's representation was ineffective under the *Strickland* test.

Even assuming, *arguendo*, that counsel's representation of Martin was somehow deficient, Martin must satisfy the second prong of the *Strickland* test, prejudice. In setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk dismissal.<sup>11</sup> In an attempt to show prejudice, Martin simply makes vague allegations. His unsubstantiated statements are insufficient to establish prejudice. To the extent that Martin alleges his plea was involuntary, the record clearly contradicts such an allegation. When addressing the question of whether a plea was constitutionally knowing and voluntary, the Court looks to the plea colloquy to determine if the waiver of constitutional rights was knowing and voluntary.<sup>12</sup> At the guilty-plea hearing, the Court asked Martin whether he understood the nature of the charges, the

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<sup>10</sup> *Mapp v. State*, 1994 WL 91264, at \*2 (Del. Supr.) (citing *Sullivan v. State*, 636 A.2d 931, 937-38 (Del. 1994)).

<sup>11</sup> *Younger*, 580 A.2d at 556.

<sup>12</sup> *Godinez v. Moran*, 509 U.S. 389, 400 (1993).



consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Martin if he understood he would waive his constitutional rights if he pled guilty, if he understood each of the constitutional rights listed on the Guilty Plea Form, and whether he gave truthful answers to all the questions on the form. The Court specifically asked Martin if he understood he would be waiving any right to challenge the search warrant.<sup>13</sup> The Court asked Martin if he had discussed the guilty plea and its consequences fully with his attorney. The Court also asked Martin if he was satisfied with his counsel's representation. Martin answered each of these questions clearly and affirmatively.<sup>14</sup>

Furthermore, prior to entering his guilty plea, Martin signed the Guilty Plea Form and Plea Agreement in his own handwriting. Martin's signatures on the forms indicated that he understood the constitutional rights he was relinquishing by pleading guilty and that he freely and voluntarily decided to plead guilty to the charges listed in the plea agreement. Martin is bound by the statements he made on the signed Guilty Plea Form unless he proves otherwise by clear and convincing evidence.<sup>15</sup> I confidently find that Martin entered his guilty plea knowingly and voluntarily and that Martin's grounds for relief are completely meritless.

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<sup>13</sup> *State v. Martin*, Del. Super., ID No. 0808015453A (Apr. 30, 2009), Tr. at 7.

<sup>14</sup> *Id.* at 5-11.

<sup>15</sup> *Sullivan v. State*, 636 A.2d 931, 937-38 (Del. 1994)(ruling the fact that defendant filled out Truth-In-Sentencing Guilty Plea Form in defendant's own handwriting supported the Superior Court's conclusion that defendant's decision to plead guilty was knowing and voluntary).

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I find that Martin's counsel represented him in a competent and effective manner and that Martin has failed to demonstrate any prejudice stemming from the representation. I also find that Martin's guilty plea was entered knowingly and voluntarily. Consequently, I recommend that the Court *deny* Martin's motion for postconviction relief as procedurally barred.

\_\_\_\_\_/s/ Andrea Maybee Freud

Commissioner

AMF/dsc

oc: Prothonotary

cc: Hon. Robert B. Young

Kathleen A. Dickerson, Esq

Deborah L. Carey, Esq.

Tyrone J. Martin, VCC

File